IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 16045 of 2007(I)

PETITIONER:

M/S. S.R. CASHEWS (P) LTD.,
KOCHUPILAMMOODU, KOLLAM, REP. BY ITS
MANAGING DIRECTOR, S.RADHAKRISHNAN NAIR.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V.MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENTS:

---

1. ASSISTANT COMMISSIONER (ASSMT.),
SPECIAL CIRCLE, KOLLAM.

2. TAHSILDAR (REVENUE RECOVERY),
TALUK OFFICE, KOLLAM.

3. VILLAGE OFFICER,
VADAKKEVILA, KOLLAM.

4. INDIAN OVERSEAS BANK, KOLLAM.

5. CHANDRAMONY,
THAVOOT HOUSE, PRAKULAM, PERINADU P.O., KOLLAM.

6. DISTRICT COLLECTOR, KOLLAM.

7. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

*8. P.RAMACHANDRAN, KIRAN STEEL INDUSTRIES,
KANNANALLOOR, KOLLAM.

(*IMPLEADED AS PER ORDER DATED 22/08/2007 IN IA NO. 10937/2007)

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
GOVERNMENT PLEADER
SRI.JIJO PAUL
ADV. SHRI.P.B.SURESH KUMAR, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 16045/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT.

P2 : COPY OF THE LETTER SUBMITTED BEFORE THE 2ND RESPONDENT.

P3 : COPY OF THE NOTICE IN FORM 16 ISSUED BY 2ND RESPONDENT.

P4 : COPY OF THE ORDER OF THE APEX COURT IN SLP (C) NO. 6677/07.

P5 : COPY OF THE ORDER OF THE APEX COURT IN SLP (C) NO. 7440/03.

P6 : COPY OF THE PETITION SUBMITTED BEFORE THE 6TH RESPONDENT.

RESPONDENT'S EXHIBITS

R5(a) : COPY OF THE RECEIPT EVIDENCING THE PAYMENT OF RS. 2,98,500/- DATED 25/04/2007.

R5(b) : COPY OF THE RECEIPT FOR RS. 16,91,500/- DATED 22/05/2007.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 16045 of 2007

Dated, this the 21st day of August, 2007

J U D G M E N T

Petitioner firm, a defaulter to sales tax arrears and arrears of loan due to the 4th respondent Bank, is challenging sale of property by the 2nd respondent to the 5th respondent for Rs. 19.90 lakhs. The sale was made on 25/04/2007 and the purchaser remitted 15% on the date of sale and balance on 22/05/2007. Petitioner's case is that the additional respondent impleaded herein has agreed to purchase the property for nearly Rs. 10 lakhs above the price on which it was sold to 5th respondent. The confirmation of sale was stayed by this Court. I feel, sale calls for interference because of the simple reason that the sale price offered by the proposed purchaser, i.e. Addl. Respondent herein, is 50% above the price offered by the purchaser. Moreover, even though defaulter is the applicant, this Court has to take into account the interest of the State, to which around Rs. 15 lakhs sales tax arrears is due, and also of the Nationalised Bank, to which also a substantial amount is due. Even though Bank was already given an opportunity to find out a purchaser to purchase the property for an amount above the proposed purchase price, Bank failed to comply with the same. In

the circumstances and also taking into account the interest of the purchaser, I allow the writ petition quashing the sale made in favour of the 5th respondent, on the additional respondent paying to 5th respondent the entire amount deposited by him, along with it 5% in terms of Section 52 of the RR Act, within a period of three weeks from now. Besides this, the additional respondent impleaded herein should deposit the balance amount of the sale price of Rs. 29 lakhs before the 2nd respondent. The 2nd respondent will adjust from the amounts collected from the 5th respondent and from the additional respondent, towards arrears of tax dues to the State first and pay the balance to the 4th respondent Bank. The adjustment by the Tahsildar towards arrears due to the State will be subject to the result of appeal filed before the Supreme Court against the decision of this Court in some other cases. It will be open to the Bank to proceed with recovery against he petitioner for the balance liability. If payment is not made within three weeks from now as stated above, sale in favour of the 5th respondent will be confirmed and it will be open to the petitioner to challenge it, if there is any irregularity in sale.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg